U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-A-Y-

DATE: JULY 29, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a business development manager, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Nebraska Service Center, denied the petition. The Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, but that she had not established that a waiver of a job offer would be in the national interest.

The Petitioner appealed the matter to us. We dismissed the Petitioner's appeal, and reaffirmed that decision in two motion adjudications. Contrary to the Director's determination, we also found that the Petitioner had not established she qualified for the underlying immigrant classification. The matter is now before us on a third motion to reopen. We will deny the motion.

I. PERTINENT PROCEDURAL HISTORY

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, with the Nebraska Service Center. The Director denied the petition, finding that the Petitioner qualified as a member of the professions holding an advanced degree or as an individual of exceptional ability, but that she did not establish a waiver of the job offer would be in the national interest of the United States.

We dismissed the Petitioner's appeal, affirming the Director's finding regarding the national interest waiver of the job offer requirement. We thoroughly discussed the Petitioner's evidence and determined that she had not submitted sufficient documentation to support the assertions regarding her past success in her field. We found that statements regarding the Petitioner's unique training and skill set are not a sufficient basis for a national interest waiver, and that the record did not demonstrate that her work had some degree of influence on the field as a whole. In addition, we determined that the Petitioner had not shown that she qualifies as an individual of exceptional ability or an advanced degree professional, and

we therefore withdrew the director's finding regarding the Petitioner's qualification for the underlying immigrant classification.

The Petitioner filed a motion to reopen and submitted a statement, a new letter of recommendation, and a copy of a previously submitted letter. In her statement, the Petitioner contended that our previous decision was incorrect, and additionally stated that she had invented and was the first to implement a new approach to developing business strategies that combines the methods of two of her professors. In support of the motion, the Petitioner provided a copy of a previously submitted letter of recommendation, as well as a new, undated letter from the chair and co-founder of a charity initiative. The letter stated that the Petitioner had assisted the organization in establishing its mission, vision, values and identity, and that her help allowed the organization "to move on much faster, pinpoint the partnering entities, set up goals and leverage the talent in the team."

We dismissed the Petitioner's motion, and found that her new evidence was insufficient to overcome our previous decision. We stated that the Petitioner had not submitted documentary evidence to support the claim that she was the inventor or pioneer of the combined approach described in her statement, or to establish its impact on the field of business management development. We also found that the Petitioner's motion did not address or overcome our finding that she did not establish eligibility for the underlying immigrant classification. Furthermore, we indicated that the Petitioner's arguments that our appellate decision was incorrect amounted to a motion to reconsider, "the purpose of which is to contest the correctness of the original decision based on the previously established factual record." We stated that, even if the Petitioner had filed a motion to reconsider, we would have dismissed that motion as she did not establish that our previous decision was based on an incorrect application of law or policy.

The Petitioner filed a second motion to reopen that included a personal statement and a letter from president and chief executive officer of indicated that the Petitioner developed a business strategy for the company using the Balanced Scorecard approach with "unique alterations" including "engaging every single employee of the company and sourcing their perspective on solving pressing issues." While attested that the Petitioner was the first person to modify the Balanced Scorecard approach to include input from every employee, the record did not include documentary evidence to support the claim. Further, even if supported by documentary evidence, letter did not explain how the Petitioner's modification has had an influence on the field of business development management as a whole.

Accordingly, we reaffirmed the denial of the petition. The evidence submitted on motion did not overcome our finding that the Petitioner had not established eligibility for a national interest waiver of the job offer requirement. In addition, we affirmed our previous finding that she had not established eligibility for the underlying immigrant classification.

II. MOTION TO REOPEN

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing

and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110.

In support of her motion to reopen, the Petitioner submits a brief discussing her work experience and application of the Balanced Scorecard approach; a letter from Professor of Leadership Development, a consulting agreement that she executed with in October 2014; and a diploma from in Bulgaria with a certified English language translation that identifies the Petitioner's academic qualification as a "Master of Public Administration" degree. In her brief, the Petitioner repeats arguments previously offered in support of her appeal and earlier motions. She does not offer any new facts that would serve as bases for overcoming our latest decision. The Petitioner's brief also lists an "Invitation for in among the submitted documents, but the motion does not include the invitation or evidence that her participation in the conference is indicative of her influence on the field as a whole.

The letter from mentions that he met the Petitioner when she participated in the Program for Leadership Development which he taught in 2012, and that that they "have remained in contact" since that time. further states:

> I have learned how [the Petitioner] has played a critical role in multiple projects focused on developing strategies based on my Balanced Scorecard strategic framework. I was pleased to hear about her success working with clients and implementing the core principles of the Balanced Scorecard that I taught and continue to teach at

While notes that the Petitioner has utilized his Balanced Scorecard approach, he does not indicate that she has developed any original methodologies that are being implemented by other business consultants or that have otherwise affected the field as a whole. In addition, explains that the Petitioner helped one of her clients "achieve [a] double digit revenue increase in a fast changing business environment," and that to his knowledge, the company has hired "more than 30 new employees in the last 18 months," but he does not provide any specific examples of how the Petitioner's work has influenced the field as a whole. adds that the Petitioner's work for the client "speaks volumes about the impact of her work on the U.S. economy and strengthening the business capacity of companies." The record, however, does not indicate that the benefits of her work would extend beyond her business clients such that they will have a national impact.

The Petitioner's October 2014 consulting agreement with post-dates the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, we cannot consider any consulting agreements executed after December 17, 2012, the date the petition was filed, as evidence to establish the Petitioner's eligibility at the time of filing. Regardless, the record does not include evidence demonstrating that the Petitioner's work for the company has influenced the field as a whole.

With regard to her eligibility for the underlying immigrant classification, the Petitioner refers to herself on motion as "a holder of an advanced degree, and an alien of exceptional ability." She indicates that her motion includes a "legalized and notary attested diploma with an apostille from the Ministry of Foreign Affairs of for Master Degree from In addition, the Petitioner claims that she has "completed EMBA [Executive Master of Business Administration] at but this statement, unsubstantiated by supporting evidence, is insufficient to satisfy the Petitioner's burden of proof. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Although the Petitioner's motion includes her master of public administration degree from in Bulgaria, she has not provided a credential evaluation to establish its equivalency to a United States degree. The Petitioner may hold a degree equivalent to a United States master's degree, but she has not submitted sufficient evidence to support that conclusion. In addition, the Petitioner does not offer any additional evidence for the regulatory criteria required to establish status as an individual of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A) - (F). We therefore affirm our previous finding that the Petitioner has not established eligibility for the underlying immigrant classification.

The motion to reopen does not include any new facts or other documentary evidence to overcome the grounds underlying our previous findings. Accordingly, the motion to reopen is denied.

III. CONCLUSION

On the basis of the documentation submitted, the Petitioner has not established eligibility for the underlying immigrant classification and that a waiver of a job offer will be in the national interest. As the evidence provided in support of the motion to reopen does not overcome the grounds underlying our previous decision, the motion is denied. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The motion to reopen is denied.

Cite as *Matter of T-A-Y-*, ID# 17466 (AAO July 29, 2016)